

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 09-130

Approving an IGA and Lease with the City of Portland for a Portion of the Gateway Children's Center Building for a One-Stop Domestic Violence Service Center

The Multnomah County Board of Commissioners Finds:

- a. On July 9, 2009, by Resolution 09-096, the Board accepted the report and recommendations contained in the Feasibility Study for a One-Stop Domestic Violence Service Center (OSDV Service Center) and declared a portion of the Gateway Children's Center Building as surplus property (Property) appropriate for use as an OSDV Service Center.
- b. Commissioner Cogen, the Multnomah County Domestic Violence Coordinator and the Facilities and Property Management Division have worked together to negotiate the terms of an IGA with the City of Portland to implement the study recommendations for a OSDV Service Center on the Property. The Property is located at 10305 SE Burnside Street, Portland, Oregon, and was formerly occupied by the Children's Receiving Center.
- c. Under the terms of the IGA, the County will lease the Property to the City and develop and oversee the architectural and construction services that will be paid for by the City.
- d. The attached IGA and Lease have been negotiated with the City and it is in the best interests of the County to enter into the IGA and lease the Property on the terms and conditions set forth in the attached documents.

The Multnomah County Board of Commissioners Resolves:

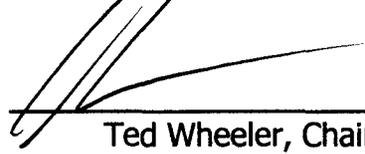
1. The attached Intergovernmental Agreement regarding a One-Stop Domestic Violence Service Center is approved; and upon approval of the agreement by Portland, the County Chair is authorized and directed to sign the agreement in a form substantially as set forth in the attachment.
2. The Board approves the attached lease of the Property. The County Chair is authorized to execute a lease in a form substantially as set forth in the attachment.

3. The County Chair is authorized to execute amendments and renewals of the lease without further Board action.

ADOPTED this 22nd day of October, 2009.



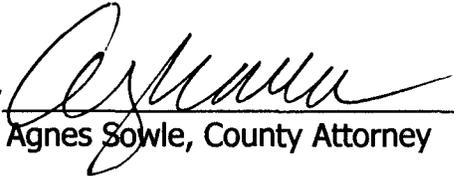
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

Agnes Sowle, County Attorney

SUBMITTED BY:
Commissioner Jeff Cogen

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement is entered into by and between the City of Portland, Oregon ("City"), and Multnomah County, Oregon ("County").

PURPOSE

The purpose of this Intergovernmental Agreement ("IGA" or "agreement") is to establish a framework for the City and County to jointly support the Gateway Center for Domestic Violence Services ("the Center") to provide accessible and coordinated services to victims of domestic violence and their children. This IGA lays out the principles and processes by which the City-County collaboration will be developed and function.

It is the intent of the City and the County to implement the Center in order to provide an opportunity for co-location of agencies to improve service delivery by facilitating communication among domestic violence community-based services, law enforcement, and prosecution agencies. The goal of the Center is to provide victim-centered services that promote victim autonomy.

RECITALS

- a. The City has approved an operational budget annually of \$422,000 and \$1.76 million in one-time only funding to launch the Center.
- b. The City is the fiscal agent for operation of the Center, and employees of the Center are deemed employees of the City for purposes of determining fringe benefits and supervisory structure.
- c. The County has approved the free use of the property described in Exhibit A for the Center's operation, and will prepare a leasing agreement with the City for use of the building.
- d. The City accepted the recommendations for the Feasibility Study for a One-Stop Domestic Violence Center dated February 2008. Pursuant to that report the City in conjunction with the County convened an Implementation Task Force to work on budgetary and governance issues.
- e. The County has passed a resolution that accepted the City's Report and Recommendations of the Feasibility Study for a One-Stop Domestic Violence Service Center dated February 2008, and has agreed to join with the City and other appropriate partners to negotiate the terms of an agreement to establish a One-Stop Domestic Violence Service Center. Commissioner Cogen has been authorized to work with the Multnomah County Domestic Violence Coordinator and Facilities and Property Management to negotiate terms of an IGA with the City to implement the recommendations of the Feasibility Study for a One-Stop Domestic Violence Center.

The parties agree as follows:

1. **TERM** This Agreement shall extend from July 1, 2009 to June 30, 2014. This agreement may be renewed or extended upon written agreement of both parties provided in this agreement.

2. **RESPONSIBILITIES OF CITY WILL BE TO:**
 - a. Provide Commissioner Dan Saltzman to act as the elected official to be the City government liaison to the Center. In the event that Commissioner Saltzman is no longer able or willing to serve as liaison, the City Council will appoint another elected official to be the City government liaison to the Center.

 - b. The role of the City government liaison will be to provide overall leadership to the Center at the City government and community level, to appoint members of the Advisory Council, as described below, to participate on and support the activities of the Advisory Council, to confer annually with the County liaison or as needed about Center operations, City funding and County provision of facilities, and to assure that the Director is hired and supervised at the City.

 - c. Provide and supervise a full time Director to oversee and manage operations, partnerships outreach and evaluation for the Center. The Director will hold overall responsibility for effective operation of the Center including occupancy agreements with partner agencies and staffing of the Advisory Council.

 - d. It is anticipated that in addition to the Director, the City will provide a full time operations manager, receptionist, security guard, three FTE contracted Navigators, .5 FTE Civil legal attorney, and other (non-facilities related) costs related to providing access and services to victims on site. These staffing levels are subject to change based on the input of the Advisory Council and subject to City budgetary conditions.

 - e. The City shall establish and staff a Center Advisory Council
 - 1) An Advisory Council shall be formed to provide high level advice related to policy and operations of the Center to the Center Director and to the City Council and Board of County Commissioners.

 - 2) The Advisory Council shall have no more than 13 members and no fewer than 9 members who represent the diversity of agencies that provide intervention in domestic violence, including representatives from the Multnomah County Domestic Violence Coordinator's Office (1), Office of the District Attorney (1), Portland Police Bureau (1), Department of Human Services (1), Non-profit Domestic Violence

Service Providers (3), the Multnomah County Circuit Court (1), the Multnomah County Family Violence Coordinating Council (1), Civil legal service provider (1), domestic violence survivors (1), and the governmental liaisons (2).

- 3) Appointments will be of specific individuals representing named entities or bringing particular expertise to the project. Initial appointments to the Advisory Council shall be for a term of two or three years, as indicated below. Following the initial appointments, terms shall be for two years. Individuals can serve on the Advisory Council for multiple terms.
- 4) Advisory Council members shall be appointed by the designated government liaisons who will seek to come to agreement on who the members should be. In the event the government liaisons do not agree on appointments to the Advisory Council, appointments will be made by the government liaison representing either the City or the County as named below.

Entity or Expertise	Appointment Authority In the Event of Disagreement
Community based DV Agency (2 year)	City
Community based DV Agency (3 year)	County
Community based DV Agency (2 year)	County
Department of Human Services (3 year)	City
District Attorney's Office (2 year)	City
Domestic Violence Coordinator's Office (3 year)	County
Domestic Violence Survivor (2 year)	City
Legal Aid Services of Oregon (3 year)	County
Multnomah County Circuit Court (2 year)	County
Portland Police Bureau (3 year)	City
Family Violence Coordinating Council (2 year)	City

- 5) The role of the Advisory Council shall be:
 - i. To adopt Advisory Council operating principles consistent with the

goals of the Center to provide victim centered services that promote victim autonomy. These principles will include a process to identify policy level disagreements, for resolutions of disagreements, for involving the larger domestic violence service community including but not limited to airing at the Family Violence Coordinating Council. The operating principles will include rules related to voting.

- ii. To develop and adopt an evaluation plan consistent with the provisions contained later in this document regarding "An Evaluation Plan for the Center."
 - iii. To approve all occupants of the Center at the agency level, and approve expulsion of Center occupants at the agency level. The City will ensure that all persons or entities that occupy space in the Premises are sublessees and shall execute a Sublease that expressly provides that the Sublease is subject to the Master Lease between the County and the City. All Sublessees shall qualify as government or otherwise non-profit to maintain the tax exempt status of the facility
 - iv. Review and annually make recommendations to the City Council regarding the Center's operating budget and Board of County Commissioners regarding the County's grant of the facilities to the center, and advocate for adequate funding for the Center.
 - v. To report annually to the City and County Commissioners, in conjunction with the Director, regarding the Center's outcomes, operations, funding, facility or other issues.
- 6) The Advisory Council or any individual member of the Advisory Council can along with the Center Director solicit policy level feedback from the Family Violence Coordinating Council at any time.
- f. Develop Interagency Agreements/MOU's with Center sub-lessees regarding use of facility and policies and procedures, which will conform to the terms of the Master Lease.

3. RESPONSIBILITIES OF COUNTY WILL BE TO:

- a. Provide Commissioner Jeff Cogen to act as the elected official to be the government liaison to the Center. In the event that Commissioner Cogen is no longer able or willing to serve as liaison, the Board of County Commissioners will appoint another elected official to be the government liaison to the Center.

- b. The role of the County liaison will be: to provide overall leadership to the Center at the County government and community level; to appoint members of the Advisory Council, as described above; to participate on and support the activities of the Advisory Council, to confer annually with the City liaison or as needed about City funding for the Center and County provision of facilities.
- c. Provide use of the property described in Exhibit A for Center operations on terms contained in the lease attached as Exhibit B.
- d. Provide on-going technical assistance and consultation through the DV Coordinator's Office, including participating on the Advisory Committee.

4. JOINT CITY AND COUNTY RESPONSIBILITY WILL BE TO:

- a. Assure that the services provided at the Center are coordinated with and integrated into the larger domestic violence victim services and criminal justice response.

5. AN EVALUATION PLAN FOR THE CENTER

- a. The Feasibility Study for the Center recommends an evaluation plan be created to evaluate the intended outcomes of the Center and to create a mechanism for making needed program changes based on data collected. The Implementation Task Force proposed that a portion of the one-time funds allocated by the City be used for evaluation design and implementation.
- b. The Feasibility Study tasks the Advisory Council (referred to as Governance Council in the Feasibility Study) with the responsibility for development of an evaluation plan and monitoring of the operations of the Center based on that plan.
- c. Pursuant to those recommendations, the Advisory Council shall develop an evaluation plan which collects key data to measure the impact of the Center on the Center participants and their children and provide data regarding the Center's impact on the exiting domestic violence service system, in addition to other data the Advisory Council deems necessary to collect to maintain and monitor the Center's operations.
- d. An evaluation of the Center shall begin at the end of second year of operation of the Center, and shall be completed prior to the end of the third year of operation of the Center to allow the County Board of Commissioners and the City Council to evaluate the impact and effectiveness of the Center.

- e. The Center Director shall be responsible for oversight and management of the evaluation plan at the direction of the Advisory Council.
 - f. The Advisory Council shall recommend a budget for the evaluation plan subject to approval by the City Council.
5. **TERMINATION.** Either party upon 30 days written notice may terminate this agreement.
6. **AMENDMENTS.** This agreement can be amended by mutual written agreement of the both parties.
7. **INDEMNIFICATION** Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless City from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, City shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of City, its officers, employees and agents in the performance of this agreement.
8. **INSURANCE** Each party shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.
9. **ADHERENCE TO LAW** Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.
10. **NON-DISCRIMINATION** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
11. **ACCESS TO RECORDS** Each party shall have access to the books, documents and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law.

12. SUBCONTRACTS AND ASSIGNMENT Neither party will subcontract or assign any part of this agreement without the written consent of the other party.

13. THIS IS THE ENTIRE AGREEMENT This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

Multnomah County, Oregon

City of Portland

By: Ted Wheeler, Chair

**By:
Title:**

Approved as to Form:

Approved as to Form:

Multnomah County Attorney

Portland City Attorney

LEASE

Date:

Between: Multnomah County, Oregon ("Landlord")
Facilities and Property Management
401 N. Dixon Street
Portland, OR 97227

And: City of Portland ("Tenant")

Landlord owns a multi-building facility located in the Gateway Section of the City of Portland, Oregon with street addresses identified as 10305 East Burnside Street to 10317 East Burnside Street. Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on the terms and conditions stated below:

Approximately **10,802** square feet of space, as shown in Exhibit "A" of this Lease, the Building and Premises known as the Multnomah County Children's Receiving Center Residential Building located at **10305 East Burnside Street, Portland, Oregon 97216**. In addition and subject to the rights of the other Tenants to use the kitchen facilities located in the premises to prepare meals and other uses, Tenant shall also have a non-exclusive use of the kitchen facilities for minimal uses such as making coffee, tea and light refreshments; subject to the rights of the other Tenants of the "MDT Building" located at 10317 East Burnside, Tenant shall have the right to use the "Common conference Room" in the basement of the MDT Building.

Section 1. Occupancy

1.1 Original Term. The term of this Lease shall commence **November 1, 2009 or as soon thereafter as Tenant begins using the Premises in furtherance of operation the Domestic Violence Center, and continue for a period of five years** unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant's right to possession and obligations under the Lease shall commence on November 1, 2009, or on such date as the work to be performed by landlord is substantially complete and the Premises are available for possession by Tenant if possession is not given on the opening day of the term. Landlord shall have no liability for delays in delivery of possession and Tenant will not have the right to terminate this Lease because of delay in delivery of possession except as hereinafter provided.

1.3 Renewal Option. If the Lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this Lease for 3 successive terms of 5 years each, as follows:

- (1) Each of the renewal terms shall commence on the day following expiration of the preceding term.
- (2) The option may be exercised by written notice to Landlord given not less than **90** days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.
- (3) The terms and conditions of the Lease for each renewal term shall be identical with the original term except for rent. Rent for a renewal term shall be as mutually agreed upon between Landlord and Tenant.
- (4) Landlord may evaluate Tenant's use of the Premises for conformance to standards of operation, and may choose not to renew the Lease under this Section 1.3 Renewal Option, if Landlord determines that Tenant's use of the Premises is non-compliant with such standards as determined by Landlord.

1.4 Early Termination.

- (1) It is understood and agreed that Landlord or Tenant may cancel this agreement, effective on any date during the term hereof, by giving notice to the other of not less than **90** days written notice of such cancellation.
- (2) Tenant may terminate this Lease upon **60** days written notice to Landlord, effective on or after the effective date of termination by Multnomah County of Contract No. _____ between Multnomah County and The City (Tenant) dated _____ for the purpose of operating the Domestic Violence Center as provided in Section 3.1, or any successive contract for such services at the Premises.
- (3) In the event of early termination as provided herein, Tenant shall be allowed up to an additional **30** days after the established terminate date under Sub-section (1) or (2) to relocate operations of the Premises. Provided Tenant shall be responsible for any rental amount due until such date that operations, relocation and/or compliance with Section 15.1 obligations are completed. In the event that Contract No. _____ is terminated, and if Tenant obtains program funding through alternative sources and approved by Landlord, this Lease may continue through the original term under all other terms, conditions and provisions set forth herein.

Section 2. Rent

2.1 Base Rent. During the original term, Tenant shall pay to Landlord as base rent the sum of \$ -0- per month stated in terms of dollars. Rent for purposes of this Lease shall be Tenant's ongoing and continuous performance of and compliance with all terms and conditions of that certain Intergovernmental Agreement (County Contract No. ____) between Tenant and Landlord wherein Tenant is the Contractor to operate and provide the Domestic Violence Center at the Premises.

2.2 Additional Rent. Any other sum that Tenant is or may in the future be required to pay to Landlord shall be considered additional rent.

Section 3. Permitted Use

3.1 Permitted Use. The Premises shall be used to provide domestic violence services, consistent with the Domestic Violence Center program requirements in compliance with all terms and conditions of that certain Intergovernmental Agreement (County Contract No. ____) and for no other purpose without the consent of Landlord.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

- (1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance.
- (2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.
- (3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.
- (4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.
- (5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord, which shall not be unreasonably withheld.

3.3 Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the Permitted Use specified in Section 3.1. Tenant may store such hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term hazardous Substance shall mean any hazardous, toxic, infectious or

radioactive substance, waste, and material as defined or listed by any Environmental law and shall include, without limitation, petroleum oil and its fractions.

- 3.4 Parking.** Tenant, its employees, sub-lessees and clientele shall have exclusive use of the parking designated for use by the previous tenant of the residential building.

Section 4. Repairs and Maintenance

4.1 Maintenance and Repair of Premises. Responsibilities for repair and maintenance of the Premises shall be as follows:

- (1) Landlord shall perform all necessary maintenance and repairs to the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, and Lessor-provided fire extinguishers, sidewalks and parking area, which are located on the Premises or the structure in which the Premises are located. Landlord shall maintain the premises in a hazard free condition and shall repair or replace, if necessary and at Landlord's sole expense, the heating, air conditioning, plumbing, electrical, and lighting systems in the Premises, obtaining required permits and inspections from Codes Enforcement authorities. Landlord shall keep the Premises, improvements, grounds, and landscaping in good repair and appearance. Carpets shall be repaired and replaced as necessary by Landlord. Landlord shall furnish, install and replace all exterior and interior lighting bulbs, ballasts and fluorescent tubes.
- (2) Tenant shall take good care of the interior of the Premises and at the expiration of the term surrender the Premises in as good condition as at the commencement of this Lease, excepting only reasonable wear, permitted alterations, and damage by fire or other casualty.
- (3) Landlord shall perform all necessary repairs and maintenance. Landlord shall have no liability for failure to perform required maintenance and repair unless written notice of such maintenance or repair is given by Tenant and Landlord fails to commence efforts to remedy the problem in a reasonable time and manner.

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

- (1) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 6.2 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 4.1.
- (2) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2(1), provided however, that Landlord shall be responsible for any physical improvements, repairs, or alterations that are not specifically required or requested due to Tenant's permitted use of the Premises and Building.
- (3) All other repairs to the Premises which Landlord is not required to make under Section 4.1.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall have the authority to erect scaffolding and other apparatus necessary for these purposes. Landlord shall conduct these tasks in a manner as to avoid unreasonable interference with Tenant. Tenant shall have neither right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision, except when such activities render the Premises and/or Building unsuitable for occupancy as required by Tenant's permitted use of the Premises and Building.

4.4 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

Section 5. Alterations

5.1 Alterations Prohibited. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

5.2 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Landlord or Tenant including the improvements constructed pursuant to Section 5.3 herein; shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall at Landlord's option, be removed by Tenant and the Premise restored unless the applicable Landlord's consent or worksheet specifically provides otherwise.

.5.3 Building Improvements

5.3.1 Plans and Specifications. The preliminary plans and specifications or the "schematic" for Tenant-requested improvements, ("T.R.I"'s) is attached identified as Exhibit A.

Development of Plans and Specification. Landlord shall contract with an Architectural Service Provider ("Architect") for the further development of plans and specifications, construction administration services, and project closeout documentation for the TRIs. The Tenant shall reimburse the Landlord for all charges for these services, including any development and schematic work completed to date. The Landlord, along with the Tenant, will work with the Architect to develop existing schematic plans into fully executable construction plans and specifications. At such time that a finished set of plans and specifications for the TRI's are drafted and agreed to by Landlord and Tenant that set of plans and specifications shall be added as Exhibit C to this lease.

5.3.2 Bidding Process. Landlord shall advertise and request bids for the construction of the TRI's in compliance with the plans and specifications set forth in Exhibit A as agreed to pursuant to Section 5.3.1. . Tenant shall participate in the review of the submitted bids.

5.3.3 Tenant Review. Tenant's review of the estimated budget and construction schedule of the successful bid for the TRI's prior to Landlord's entry into a contract for the work shall be done in a time and manner consistent with Landlord's contract and

procurement procedures and policies for public works projects. The estimated budget shall contain separate line items for construction costs, contract supervision fees charged by Landlord, telecom/data infrastructure, and any overhead or administrative costs charged by Landlord. Tenant shall promptly advise Landlord of any issues related to the proposed work. Landlord and Tenant shall meet in good faith to discuss any issues raised by Tenant. If Landlord and Tenant cannot agree on the resolution of any major issues in dispute, Landlord's obligations under this provision shall cease and Landlord shall be relieved of any further obligation to award a contract and or pursue the construction of the TRI's.

5.3.4 **Contracting Process.** Provided an acceptable responsive bid is received, the Landlord shall award a contract for and manage the construction of the TRI's in compliance with the plans and specifications in Exhibit A. Landlord shall only award a contract for construction of the TRI's if the available funds provided by Tenant will cover the contract amount and Landlord and Tenant have resolved any issues under Section 5.3.3.

5.3.5 **Cost.** As provided in Section 5.3.1, Tenant is responsible to reimburse Landlord for the cost of the development work to date incurred by Landlord. If a contract is awarded, Tenant is responsible for the 100% of the costs of the design and construction of the TRI's.

5.3.6 **Cost Over-Runs.** The estimated TRI construction budget will include an amount reserved for cost-overruns. If at any time after award of the contract, it appears that the cost of the TRI's will exceed the estimated budget; Landlord agrees to immediately notify Tenant. Landlord and Tenant will cooperate in determining whether any reasonable measures could be pursued to cut costs; but Tenant shall not be relieved of its obligation to cover all costs reasonably incurred in the performance of the work herein.

5.3.7 **Payments.** Tenant shall make payment as follows: Tenant shall transfer and deliver 100% of the budgeted cost of the TRI's construction to Landlord on the date of the award of the contract as provided herein. The total allowable budget for the TRI's is \$600,000.

- a. Upon submission of estimated budget: one-third of estimated budget which shall include the costs already incurred as in Sec. 5.3.5 in an amount not to exceed \$200,000.00
- b. Start of construction: one-third of estimated budget not to exceed \$200,000.00.
- c. Project Close-Out: remaining balance based on actual costs, the total of all payment shall not exceed \$600,000.00.

Section 6. Insurance

6.1 Insurance Required Landlord. Landlord shall bear the expense of any insurance insuring the Premises against fire and other risks. Tenant shall bear the expense of any insurance insuring the property of Tenant on the Premises against such risks but shall not be required to insure.

6.2 Insurance Required Tenant. Landlord acknowledges Tenant is self-insured. If Tenant is no longer self-insured, Tenant shall provide at its expense and keep in force during the Term, naming Landlord insured, (i) a commercial general liability insurance policy or such successor comparable form of coverage (hereinafter referred to as a "Liability Policy") written

on a “claims made basis”, including, without limitation, blanket contractual liability coverage, broad form property damage, independent contractor’s coverage, and personal injury coverage, protecting Landlord and Tenant against liability occasioned by any covered occurrence on or about the Premises. Such policy shall be written by a good and solvent insurance company licensed to do business in the State of Oregon and shall provide overage limits of not less than \$1,000,000 combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to a commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Tenant and thereafter, Tenant agrees to deliver to Landlord a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon 10 days prior written notice to Landlord.

6.3 Waiver of Subrogation. Neither party shall be liable to the other (or to the other’s successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party’s insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 7. Taxes

7.1 Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall, upon invoice from Landlord, reimburse Landlord for all real property taxes levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use or rental of the Premises, other than taxes on net income of Landlord. **If Tenant intends to seek exemption from real property taxes Tenant shall apply for exemption through Multnomah County Assessment and Taxation pursuant to ORS 307.112.**

7.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in the maximum number of installments allowed by law, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

7.3 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord’s interest in the Premises will be foreclosed for nonpayment. Landlord shall cooperate in any reasonable manner with such contest by Tenant.

7.4 Proration of Taxes. Tenant’s share of real property taxes and assessments for the years in which this Lease commences or terminates shall be prorated based on the portion of the tax year that this Lease is in effect.

Section 8. Services and Utilities

8.1 Landlord and Tenant Responsibilities. Landlord will cause the utilities and services listed below to be furnished to the Premises. Costs shall be paid as indicated:

Utility or Service	Cost Paid By:	
	Landlord	Tenant
Water	X	
Sewer	X	
Electricity	X	
Gas	X	
Trash Removal	X	
Janitorial Service	X	
Janitorial Supplies	X	
Window Washing	X	
Snow and Ice Removal	X	
Internet Service	X	
Phone Service	X	

8.2 Recycling Materials. Landlord shall support the policy for recycling materials as provided in ORS 279.560 by providing adequate collection areas and storage facilities for office recycling programs when recycling services are available to Tenant.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly damaged and Section 9.2 does not apply, the Premises shall be repaired by Landlord at Landlord’s expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 4.1(1) and Section 4.3.

9.2 Destruction. If the Premises or the structure are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord’s reasonable control.

9.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

9.4 Damage Late in Term. If damage or destruction to which Section 9.2 would apply occurs within one (1) year before the end of the then-current Lease term, Tenant may elect to terminate the Lease by written notice to Landlord given within 30 days after the date of the damage. Such termination shall have the same effect as termination by Landlord under Section 9.2.

Section 10. Liability and Indemnity

10.1 Liens

- (1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the premises, and shall keep the Premise free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 8% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.
- (2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within **10** days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result for a foreclosure or sale under the lien.

10.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any negligent activity of Tenant on the Premises or any condition of the premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Landlord's negligence or breach of duty under this Lease.

Section 11. Quiet Enjoyment; Mortgage Priority

11.1 Landlord's Warranties.

- (1) Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the Lease term.
- (2) Landlord affirms that construction of the Premises, including any common areas within the real property in which the Premises are situated, complies with all applicable regulatory and building codes requirements in place at the time of completion of construction, for occupancy by Tenant for the permitted uses under this Lease, and meets the standards in place at the time of construction of the Building for the Americans With Disabilities Act (ADA) for accessibility in accordance with the standards provided in the ADA Accessibility Guidelines for Buildings and Facilities, including accessible parking for the disabled in compliance with ORS 447.223.
- (3) Landlord warrants that there are no asbestos containing materials (ACM) within the Premises, including common areas within the real property in which the Premises are situated, or that any such ACM in the Premises have been removed or abated and the Premises have been inspected by a competent inspector,

qualified to perform such inspection under applicable law and regulations, and certified as safe from all friable ACM.

Section 12. Assignment and Subletting

- 12.1 Assignments and, mortgages, No part of the Premises may be assigned or mortgaged, without the prior written consent of Landlord. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent the provision from applying to a subsequent instance. In determining whether to consent to assignment Landlord may consider the following factors: financial ability of assignee; use of Premises to be similar to the Use permitted under Section 3.1 of this Lease.
- 12.2 Subleases Tenant may enter into subleases with service providers pursuant to that certain Intergovernmental Agreement (County Contract No. _____) without prior written consent from Landlord. In any such sublease Tenant shall be considered the “Sublessor” and the persons or entities that lease space from Tenant as Sublessor shall be “Sublessees”. All Sublessees shall qualify as government or otherwise non-profit to maintain the tax exempt status of the facility.
- 12.3 Tenant shall ensure and require that each sublease contain the following clause:

Master Lease: Sublessor is the lessee of the Premises and Non-exclusive Premises by virtue of a lease, hereinafter the “Master Lease”, wherein Multnomah County is Lessor, hereinafter the “Master Lessor”. This Sublease is and shall be at all times subject and subordinate to the Master Lease and Amendments to the Master Lease, attached hereto and made a part of the Sublease as **Exhibit**.

Section 13. Default

The following shall be events of default:

13.1 Default in Rent. Failure of Tenant to comply with the requirements of Section 2.1; **10** days after written notice by Landlord specifying the nature of the default with reasonable particularity or to pay any rent or other charge within **10** days after written notice that it is due.

13.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than as specified in Section 13.1) within **20** days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the **20** day period, this provision shall be complied with if Tenant begins correction of the default within the **20** day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

13.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within **30** days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of

execution within **10** days shall constitute a default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

Section 14. Remedies on Default

In the event of default by Tenant, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord, Landlord shall be entitled to pursue any remedies available to Landlord under applicable law.

Section 15. Surrender at Expiration

15.1 Condition of Premises. Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

15.2 Fixtures

- (1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.
- (2) If a month-to-month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than **30** days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 16. Miscellaneous

16.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

16.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

16.3 Notices. Any notice required or permitted under this Lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as maybe specified from time to time by either of the parties in writing.

16.4 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

16.5 Entry for Inspection. Landlord shall have the right to enter upon the Premise with 24 hours prior notice to determine Tenant's compliance with this Lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, except in cases of emergency when Landlord shall have the right to enter upon the Premises without notice. In addition, Landlord shall have the right, at any time during the last two months of the term of this Lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

16.6 Interest on Rent and Other Charges. Any rent or other payment required of Tenant by this Lease shall, if not paid within 10 days after it is due, bear interest at the rate of 8% per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. In addition, if Tenant fails to make any rent or other payment required by this Lease to be paid to Landlord may elect to impose a late charge of five cents (\$0.05) per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

16.7 Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

16.8 Oregon Tort Claims Act. Any covenant herein by Landlord to defend, indemnify or hold harmless the Tenant or to assume liability for damages of any kind whatsoever, shall be subject to the provisions of the Oregon Tort Claims Act, ORS 30.260 – 30.300, and within the limits in ORS 30.270.

16.9 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this Lease.

LANDLORD:
Multnomah County, Oregon

TENANT:
City of Portland

By: Ted Wheeler, Chair

By:
Title:

Reviewed by:

Matthew O. Ryan, Assistant County Attorney

Reviewed by:

Ellen Osoinach, Deputy City Attorney